

INTERIOR HEALTH AUTHORITY KELOWNA AND VERNON HOSPITALS PROJECT

FIRST REPORT OF THE FAIRNESS ADVISOR ON THE PROCUREMENT PROCESS: RFQ STAGE

June 18, 2007

To: **Project Executive Board, Kelowna and Vernon Hospitals Project**

Chair: Chris Mazurkewich

Members: Joanne Konnert, Steve Hollett, Manjit Sidhu, Sylvia Weir, Dave Mackintosh, Murray Ramsden, and Michael MacDougall

This report covers the following issues:

1. The scope of the review;
2. The purpose of the review;
3. The framework for the review;
4. A statement that the review has been conducted in accordance with this framework;
5. Explanatory details regarding the variables which affect the review;
6. Project Background and Monitoring Activities by Fairness Advisor;
7. Recommendations to improve process for future procurements;
8. Any qualifications on the endorsement of the process; and
9. A statement that the Fairness Advisor has fulfilled the terms of her engagement in order to express an opinion;
10. Findings in the form of an opinion whether the process appears to have been undertaken in accordance with fairness principles expressed or implied in the procurement documents.

Respectfully submitted:


Joan M. Young
Fairness Advisor

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SCOPE OF REVIEW

I was retained in April 2007 to act as the Fairness Advisor for the Kelowna and Vernon Hospitals Project. My role is to satisfy myself on the overall procedural fairness of the procurement process associated with the Kelowna and Vernon Hospitals Project.

The Interior Health Authority (“IHA”), in conjunction with its advisors, Partnerships BC, issued a Request for Qualifications (“RFQ”) for the Kelowna and Vernon Hospitals Project on May 7, 2007. This stage was intended to set out information regarding the project to the private sector and to invite those parties both interested and qualified to participate in the procurement process. The intention of IHA was to select up to three qualified Respondents to be invited to participate in the next stage of the procurement.

My engagement covers the evaluation of the responses to the procurement process from the issuance of the RFQ to conclusion of the procurement. This Interim Report covers the RFQ stage of the procurement.

The terms of engagement state that as Fairness Advisor I was asked to do the following:

1 Role of Fairness Advisor

The Fairness Advisor provides assurance to Partnerships BC and the Interior Health Authority through all stages of the Project Competitive Selection Process that the procurement processes described in the Project Request for Qualifications and Project Request for Proposals are applied fairly according to the terms described therein. And further, by way of reports that are ultimately made public, the Fairness Advisor provides an independent opinion and assurance to the public of this fair application.

2 Scope of Services of Fairness Advisor

The role of the Fairness Advisor will include:

Scope

- The Fairness Advisor will report to the Chair of a Steering Committee composed of senior officials within Interior Health Authority and Partnerships BC, overseeing the Project.

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- The Fairness Advisor will act as an independent observer with respect to the fairness of the implementation of the Project's procurement processes.
- The Fairness Advisor appointment will commence immediately and will continue until the completion of the Project Competitive Selection Process at the end of the Project Request for Proposals evaluation stage. At the discretion of the Chair of the Steering Committee, the Fairness Advisor appointment may be extended to the completion of the Financial Close stage.

Reports

- The Fairness Advisor will prepare and deliver two written reports to the Steering Committee, as follows:
 - (i) a first report at the completion of the selection of the short-listed Respondents under the Project Request for Qualifications, a copy of which will be provided to the Project Director; and
 - (ii) a second report at the completion of the selection of the final Proponent under the Project Request for Proposals process, a copy of which will be provided to the Project Director. If, at the discretion of the Chair of the Steering Committee, the Fairness Advisor appointment is extended to the completion of the Financial Close stage, the second report will be due at the completion of the Financial Close stage.
- The Fairness Advisor's reports will be available to the public after selection of the final Proponent under the Project Request for Proposals Process (first report), and final execution of the project agreement (second report), subject to the applicable legislative requirements (including the *Freedom of Information and Protection of Privacy Act* and regulations). The first report will be made available to Respondents prior to the issuance of the Project Request for Proposals.

Access to Information

The Fairness Advisor will be:

- (a) provided full access to all of the health authority's information related to the Project Competitive Selection Processes as the Fairness Advisor decides is required, including documentation, personnel, premises, meetings, reports and minutes;

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(b) permitted full access to any and all meetings, telephone conferences or other events as, in the discretion of the Fairness Advisor, are appropriate; and

(c) kept fully informed by the Project Director of all documents and activities associated with the Project request for qualification and request for qualification process.

The contact person with the Project team, when and as needed, will be the Partnerships BC Project Director.

Enquiries

- The Project Team, through the Project Director, may invite the Fairness Advisor to provide comment from time to time on issues related to the evaluation processes during the Project Competitive Selection Processes. The Fairness Advisor will not provide any comment or advice on any matter other than fairness.

- During the Project Competitive Selection Processes, the Steering Committee may request comment on proposed action or circumstance related to the administration of the Project Request for Qualifications and the Project Request for Proposals.

None of the above duties of the Fairness Advisor shall be delegated to any other person without the written approval of the Project Director.

My role as the Fairness Advisor is not to validate the Evaluation Committee's recommendation of the selected proponent; but rather is to provide oversight and assurances regarding the processes applied in making the recommendation.

PURPOSE OF REVIEW

The purpose of my review is to provide arm's length advice to the Project Executive Board and independent assurance for the Project as to the fairness and appropriateness of project management activities related to the procurement process to the Kelowna and Vernon Hospitals transaction.

FRAMEWORK FOR REVIEW

At each stage of the procurement process covered by my engagement, I undertook the following review activities in order to meet the terms of my audit:

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- (a) Review standards for handling of documents, security of documents, procedures for clarifying or rectifying errors by the owner and/or proponents,
- (b) Conduct a review of all documentation issued by Partnerships BC and/or the Interior Health Authority to proponents including all procurement documents and addenda;
- (c) Ascertain whether each proponent was provided with access to the same information as other proponents for the purposes of responding to the various procurement stages;
- (d) Ascertain whether Evaluation Criteria was established in advance of evaluations being undertaken;
- (e) Ensure that adequate measures for avoidance of conflict of interest, unfair advantage and confidentiality were established and adhered to in the procurement process as well as procedures for resolving issues which may arise during the procurement process;
- (f) Obtain information regarding rulings made by the Conflict of Interest Adjudicator to ascertain whether the recommended course(s) of action have been fully implemented;
- (g) Review the Evaluation criteria proposed for the various stages of the procurement to determine that they were reasonably and rationally connected to the stated Project objectives;
- (h) Review all responses submitted by proponents to ensure an adequate familiarity with the terms of the responses in order to undertake the Fairness Audit;
- (i) Ensure that appropriate records regarding verbal and written contact with proponents were prepared and retained;

REVIEW CONDUCTED IN ACCORDANCE WITH THIS FRAMEWORK

My review was conducted within the framework for review set out above.

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EXPLANATORY DETAILS

None.

PROJECT BACKGROUND AND MONITORING ACTIVITIES OF FAIRNESS ADVISOR

The purpose of the IHA's Request for Qualifications was to invite submissions from interested parties to participate in a DBFO (design, build, finance, operate and maintain) procurement model for the Kelowna and Vernon Hospitals in the Interior Health region.

The key objective of the IHA is to select a successful proponent to design, build, finance and maintain a new Ambulatory Care Centre (KGH-ACC); and design, build, finance and maintain a redevelopment of the Emergency Department (KGH-ED). At the Vernon Jubilee Hospital the goal is to have the proponent design, build, finance and maintain a new Diagnostic Treatment Building (VJH-DTB). The successful proponent will also be responsible for the provision of non-clinical services at the KGH-ACC and VJH-DTB which will encompass plant maintenance and housekeeping and may include these services to the full sites, subject to market demonstration of value for money.

A. Appointment of Fairness Advisor

The role of Fairness Advisor is to provide oversight on the procurement process to ensure that the process for selecting a preferred proponent is open, fair and equitable. A Fairness Advisor also provides advice on issues which may arise during the procurement process which could impact on the overall fairness of the process.

A Fairness Audit follows four phases of the procurement process:

1. Before closing of the procurement process;
2. After closing of the procurement process;
3. Procurement Evaluation Stage; and
4. Post Procurement Evaluation.

As stated above, the role of the Fairness Advisor is not to validate the Evaluation Committee's recommendation to the Project Executive Board of the selected proponent; rather, it is to provide oversight and assurances regarding the processes applied in making the recommendation.

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B. Procurement Process for Kelowna and Vernon Hospitals Project

This phase of the procurement process involved a Request for Qualifications. The intention of the IHA was to short-list up to three qualified proponents who would be invited to prepare proposals in response to a Request for Proposals.

C. Request for Qualifications

The Request for Qualifications ("RFQ") was issued on May 7, 2007 with a closing date of June 4, 2007 requesting interested parties to submit their qualifications for the project. A respondents' meeting was held in Kelowna on May 15, 2007.

The RFQ was revised in minor ways after it was issued on May 4, 2007. These amendments were permitted by the terms of the RFQ and to the extent there were amendments they did not materially benefit any one Respondent over another and were not otherwise substantively or procedurally unfair.

As a result of the RFQ process, three teams submitted responses addressing (1) design and construction, (2) financial and commercial, and (3) facilities management. All of the submissions were received in order at the submission location on or before the deadline. No submissions were rejected. Each of the three submissions was subjected to a "high level" completeness review, and no substantive deficiencies were noted. Each of the proposals had issues which required additional information for clarification. Those clarifications were issued in writing and responses received.

A number of internal staff and private sector advisors were assembled for the purpose of evaluating the submissions. Four sub-committees were formed: a Completeness Review Team, Design and Construction Team, a Project and Financial Team and a Facilities Management Team. Each of these teams reported to an Evaluation Committee which had the responsibility to evaluate and score the various proposals based on the comments of the four sub-committee teams and provide recommendations to the Project Executive Board. Each team member was required to execute a Relationship Disclosure declaration and Confidentiality Agreement in advance of access to any information or proposals received in response to the RFQ.

Security measures were established to ensure that no information from the various proposals was available to anyone who had not been cleared for access. The proposals were secured in a locked area, with a "sign in/sign out" log. Team leaders for each of the Evaluation Committee committees were responsible for ensuring that when documents were removed from their secure location for the purposes of evaluation meetings that they were safeguarded.

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Evaluators were also advised of the appointment of the Fairness Advisor and of the Conflict of Interest Adjudicator for the project. An internal review process was established for identifying potential conflict or similar issues upon submission of the required documents from the various team members. A Relationship Review Committee was formed to review each of the Evaluators' declarations. There were no conflicts identified which prevented any team member from participating in the evaluation or review of the RFQ proposals.

An Evaluation Manual for the RFQ Stage was developed based on the evaluation criteria set out in the RFQ and was finalized before the closing date for submissions. The evaluation was based on criteria set out in the RFQ. There was no "Pass/Fail" benchmark. I was provided with a draft of the Evaluation Manual in advance of the evaluation meetings. Each of the teams was also provided with an opportunity to review the draft manual, to provide comments and to make changes. Eventually all evaluators were provided with a final form of manual and evaluation training before the evaluation began and this manual formed the basis of the scoring done by the Evaluation Committee.

I attended the first Evaluation Committee meeting by telephone June 8, 2007 as an observer. Each of the Evaluation Team members discussed the relative strengths and weakness of each individual proposal. Preliminary scoring was done.

On June 15, 2007 the Evaluation Committee met with each of the three proponent teams individually to review clarification questions with the team members. Each proponent team was provided with questions in advance of the meeting. Each proponent team was advised that no new information was to be submitted except as it related to the clarification questions. The Fairness Advisor was present for all of the meetings as an observer.

After each presentation the full Evaluation Committee discussed the preliminary view of the proposal and whether to make any changes to the preliminary scoring based on the information provided. At the end of the day, at the completion of all presentations, the Evaluation Committee met again to complete its final assessment and prepare its report to the Project Executive Board. The Fairness Advisor also attended this meeting. I was provided with a copy of the Decision Note to the Project Board and am satisfied that it reflects the decisions made by the Evaluation Committee.

I am satisfied that each of the three Respondent teams was provided with a fair opportunity to have their proposal considered by the Evaluation Committee in

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accordance with the terms of the RFQ. The evaluation criteria were applied consistently and in accordance with the pre-determined evaluation criteria in the Evaluation Manual.

The Evaluation Committee also had the benefit of legal advice in this stage of the procurement, and I am satisfied that there are no known legal impediments to proceeding with the next stage of the procurement as contemplated.

The Fairness Advisor also had the opportunity to receive a verbal report from the Conflict of Interest Adjudicator regarding his activities on this project.

The advice of the Fairness Advisor was sought informally on a few occasions. To the extent that my advice was sought, I am satisfied that Evaluation Committee adhered to the advice provided.

RECOMMENDATIONS TO IMPROVE THE PROCESS FOR FUTURE PROCUREMENTS

There are no issues of note requiring any commentary by the Fairness Advisor.

ANY QUALIFICATIONS ON THE ENDORSEMENT OF THE PROCESS

My fairness audit review has been based on my own review of selected documentation and records; my discussions with the Evaluation Committee; my observations of the activities of the Evaluation Committee; answers to questions posed by me and my observations of meetings with the Respondents. I have reviewed a sampling of project related documentation, but not all documents created by each and every staff member or advisor.

My review findings are based on the assumption that I have been provided access to all relevant information in connection with the project and that I have been advised of all key project management meetings and decisions.

FINDINGS

The RFQ procurement process associated with this stage of the Kelowna and Vernon Hospitals Project has been conducted in a fair manner and in accordance with the procedures established in the Request for Qualifications stage.

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I am satisfied that:

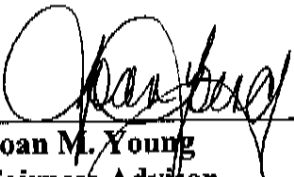
1. IHA, PBC and their advisors followed the procedures and fairly applied the evaluation criteria specified in the procurement documents and subsequent documents;
2. Where judgment and interpretation was allowed or required, the project team exercised judgment and made interpretations in a fair and impartial manner; and
3. To the extent that amendments to the process were permissible, that decisions with respect to amendments were made in a fair and impartial manner;

I am satisfied that I have been provided with the appropriate access and information to render this fairness opinion to the Project Executive Board.

FULFILLMENT OF AUDIT TERMS

I confirm that I have fulfilled the terms of my engagement based on the activities described to you above.

Respectfully submitted,



Joan M. Young
Fairness Advisor

Dated at Victoria, BC this 18th day of June, 2007

Heenan Blaikie LLP
Barristers & Solicitors
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Victoria, BC, V8W 1L6

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